

**DEPARTMENT OF INSURANCE****Legal Division, Rate Enforcement Bureau**

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September 9, 2013

Via Email

Marzia Zafar  
Director, Policy & Planning Division  
California Public Utilities Commission  
505 Van Ness Avenue, 5th Floor  
San Francisco, California, 94102

Rulemaking 12-12-011

Dear Ms. Zafar:

The California Department of Insurance (CDI) has been tracking Rulemaking 12-12-011 regarding Transportation Network Companies (TNCs). It has come to our attention that there is some confusion about the different options available for TNC insurance. This letter, prepared on short notice, represents a good faith effort to assist the California Public Utilities Commission (CPUC) in making sure that there is insurance protection in effect for drivers, passengers, and property owners in the event a TNC driver is involved in an accident.

**Issue No. 1 – Insurance Requirements**

There appears to be a question of whether TNCs should be required to maintain primary or excess coverage.

CDI is first and foremost concerned with consumer protection. The CPUC can achieve maximum consumer protection by requiring TNCs to maintain primary commercial insurance. Primary insurance will provide the maximum protection because excess insurance normally does not “drop down” and provide coverage until after the underlying insurance is exhausted. In this case, the underlying insurance – the TNC drivers’ personal auto insurance – generally excludes coverage for “liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance.” This same exclusion provides that it “does not apply to a share-the-expense car pool.” We believe that this type of exclusion precludes coverage for a TNC driver under a standard personal auto policy when passengers are making a payment that is in excess of expense sharing.

Based on informal conversations with TNCs and auto insurers, we understand that personal lines auto insurers have both paid claims and denied claims when drivers with personal lines insurance were transporting a passenger referred by a TNC. This creates confusion and uncertainty in the claims handling process. If the CPUC requires TNCs to maintain \$1 million per incident primary commercial liability coverage, it will alleviate this uncertainty.

While it would provide less protection for consumers, a second option would address the concerns that requiring TNCs to provide this type of primary insurance may be costly and could be restrictive on the newly emerging TNC industry. The second option would be to require TNCs to maintain excess commercial liability insurance that drops down to provide first dollar primary insurance if the driver's policy does not provide coverage, or the primary insurer for any reason fails to, or is unable to, make payment. This alternative might allow for the emergence of new types of insurance policies to address the TNC model. The important thing would be to ensure that the "drop down" language that makes the coverage primary is drafted so that the coverage required by the CPUC responds as primary if no other coverage is available. This model would provide flexibility for the market while maintaining first dollar protection for the consumer. The downside to such coverage is that it imposes a burden on the injured consumer to potentially pursue two sources of insurance and could result in confusion to the consumer with respect to whether the driver's personal coverage or the TNCs' excess coverage would be required to respond to the claim. This would be particularly difficult for claimants without an attorney.

#### **Issue No. 2 - Equivalent transparency**

CDI encourages the CPUC to ensure that TNC policies have a similar level of transparency as the policies required of other vehicles that transport people for a charge. The decision should prescribe the amounts of deductibles and self insurance limits, and these should be made public.

#### **Issue No. 3 - Exculpatory language in terms and conditions**

Many of the TNCs have Terms of Service that provide that the TNC is not liable for any loss, damage or injury. Yet the Proposed Decision mandates certain duties regarding safety to the TNCs. A disclaimer of liability in the TNCs Terms of Service could mislead a consumer into thinking that they do not have recourse against a TNC, when in fact the TNC will be required to maintain \$1,000,000 (one million dollars) in coverage. The CPUC should prohibit waivers that will prevent consumers from having recourse to the insurance.

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**Conclusion**

CDI commends the CPUC for its efforts in sorting through the issues involved in regulation of these new and quickly evolving Transportation Network Companies. If you have any additional questions, please contact me at 415 538-4148.

Sincerely,

A handwritten signature in black ink, appearing to read "J. McCune", is written over the printed name.

Jennifer McCune  
Attorney